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8  
9

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12

13 **INDUSTRY CONCEPT HOLDINGS,**  
14 **INC., a Colorado corporation and PRIMP,**  
15 **INC, a Colorado corporation,**

16 **Plaintiffs,**

17 **vs.**

18 **ALAN ELGORT, an individual, GREG**  
19 **LORBER, an individual, LARRY**  
20 **MONTOYA, an individual, ANDREW**  
21 **PAYNE, an individual, FANNY GARCIA,**  
22 **an individual, PACIFIC APPAREL, LLC, a**  
23 **Nevada corporation, JULIE SAENZ, an**  
24 **individual, HAUTELOOK, a California**  
25 **corporation, MARQUETTE**  
26 **COMMERCIAL FINANCE, a Texas**  
27 **corporation, VL RAYMER, an individual,**  
28 **and JOHN DOES 1 through 10,**

**Defendants.**

Case No. CV11 04444 CAS (JEMx)

**DEFENDANT HAUTELOOK'S**  
**ANSWER TO PLAINTIFFS' FIRST**  
**AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**  
**[Fed. R. Civ. P 38(b)]**

Complaint Filed: May 24, 2011  
Trial Date: None Set

CALL & JENSEN  
A PROFESSIONAL CORPORATION

1 Defendant HauteLook, Inc. (“Defendant”) hereby answers Plaintiffs Industry  
2 Concept Holdings Inc.’s and Primp Inc.’s (collectively, “Plaintiffs”) First Amended  
3 Complaint (“Complaint”) as follows:  
4

5 1. In response to paragraph 1 of the Complaint, Defendant denies any and all  
6 liability. Defendant admits that Plaintiffs purport to assert claims and damages under  
7 the Lanham Act, 15 U.S.C. §§ 1116(a) and 1121(a); 17 U.S.C. § 501; and 28 U.S.C. §§  
8 1331, 1338(a) and (b). Defendant states that the statutes cited speak for themselves, and  
9 admits that Plaintiffs purport to assert that this Court has subject matter jurisdiction over  
10 these claims and supplemental jurisdiction over state-law claims pursuant to 28 U.S.C.  
11 1367(a). Defendant admits it does business in this judicial district.

12 2. In response to paragraph 2 of the Complaint, Defendant is without  
13 knowledge or information sufficient to form a belief as to the truth of these allegations,  
14 and on that basis denies these allegations.

15 3. In response to paragraph 3 of the Complaint, Defendant is without  
16 knowledge or information sufficient to form a belief as to the truth of these allegations,  
17 and on that basis denies these allegations.

18 4. In response to paragraph 4 of the Complaint, Defendant is without  
19 knowledge or information sufficient to form a belief as to the truth of these allegations,  
20 and on that basis denies these allegations.

21 5. In response to paragraph 5 of the Complaint, Defendant is without  
22 knowledge or information sufficient to form a belief as to the truth of these allegations,  
23 and on that basis denies these allegations.

24 6. In response to paragraph 6 of the Complaint, Defendant is without  
25 knowledge or information sufficient to form a belief as to the truth of these allegations,  
26 and on that basis denies these allegations.  
27  
28

1           7. In response to paragraph 7 of the Complaint, Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of these allegations,  
3 and on that basis denies these allegations.

4           8. In response to paragraph 8 of the Complaint, Defendant is without  
5 knowledge or information sufficient to form a belief as to the truth of these allegations,  
6 and on that basis denies these allegations.

7           9. In response to paragraph 9 of the Complaint, Defendant is without  
8 knowledge or information sufficient to form a belief as to the truth of these allegations,  
9 and on that basis denies these allegations.

10          10. In response to paragraph 10 of the Complaint, Defendant is without  
11 knowledge or information sufficient to form a belief as to the truth of these allegations,  
12 and on that basis denies these allegations.

13          11. In response to paragraph 11 of the Complaint, Defendant admits that  
14 HauteLook is doing business in California, but otherwise Defendant denies any and all  
15 liability, and denies generally and specifically each and every allegation pertaining to  
16 HauteLook contained therein.

17          12. In response to paragraph 12 of the Complaint, Defendant is without  
18 knowledge or information sufficient to form a belief as to the truth of these allegations,  
19 and on that basis denies these allegations.

20          13. In response to paragraph 13 of the Complaint, Defendant denies any  
21 relation to any other named defendant, and is otherwise without knowledge or  
22 information sufficient to form a belief as to the truth of these allegations, and on that  
23 basis denies these allegations.

24          14. In response to paragraph 14 of the Complaint, Defendant admits that  
25 Plaintiffs purport to group a selection of defendants under a common designation, but is  
26 otherwise without knowledge or information sufficient to form a belief as to the truth of  
27 these allegations, and on that basis denies the allegations in that paragraph.  
28

1           15. In response to paragraph 15 of the Complaint, Defendants are without  
2 knowledge or information sufficient to form a belief as to the truth of these allegations,  
3 and on that basis denies these allegations.

4           16. In response to paragraph 16 of the Complaint, Defendant admits that  
5 Exhibit 1 purports to be a copy of a certificate of trademark registration, Exhibit 2  
6 purports to be a copy of an assignment of right, and Exhibit 3 also purports to be an  
7 assignment of right. Otherwise, Defendant is without knowledge or information  
8 sufficient to form a belief as to the truth of these allegations, and on that basis denies  
9 these allegations.

10           17. In response to paragraph 17 of the Complaint, Defendant admits that  
11 Exhibit 4 purports to be a copy of a trademark application. Otherwise, Defendant is  
12 without knowledge or information sufficient to form a belief as to the truth of these  
13 allegations, and on that basis denies these allegations.

14           18. In response to paragraph 18 of the Complaint, Defendant admits that  
15 Exhibit 5 purports to be a copy of a Certificate of Registration accompanied by  
16 photographs. Otherwise, Defendant is without knowledge or information sufficient to  
17 form a belief as to the truth of these allegations, and on that basis denies these  
18 allegations.

19           19. In response to paragraph 19 of the Complaint, Defendant admits that  
20 Exhibit 6 purports to show copies of photographs of exemplars of apparel. Otherwise,  
21 Defendant is without knowledge or information sufficient to form a belief as to the truth  
22 of these allegations, and on that basis denies these allegations.

23           20. In response to paragraph 20 of the Complaint, Defendant is without  
24 knowledge or information sufficient to form a belief as to the truth of these allegations,  
25 and on that basis denies these allegations.

26           21. In response to paragraph 21 of the Complaint, Defendant is without  
27 knowledge or information sufficient to form a belief as to the truth of these allegations,  
28 and on that basis denies these allegations.

1           22. In response to paragraph 22 of the Complaint, Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of these allegations,  
3 and on that basis denies these allegations.

4           23. In response to paragraph 23 of the Complaint, Defendant denies the  
5 allegations contained therein.

6           24. In response to paragraph 24 of the Complaint, Defendant is without  
7 knowledge or information sufficient to form a belief as to the truth of these allegations,  
8 and on that basis denies these allegations.

9           25. In response to paragraph 25 of the Complaint, Defendant is without  
10 knowledge or information sufficient to form a belief as to the truth of these allegations,  
11 and on that basis denies these allegations.

12           26. In response to paragraph 26 of the Complaint, Defendant is without  
13 knowledge or information sufficient to form a belief as to the truth of these allegations,  
14 and on that basis denies these allegations.

15           27. In response to paragraph 27 of the Complaint, Defendant denies any and  
16 all liability, denies generally and specifically each and every allegation pertaining to  
17 HauteLook contained therein, and is otherwise without knowledge or information  
18 sufficient to form a belief as to the truth of these allegations.

19           28. In response to paragraph 28 of the Complaint, Defendant admits that  
20 Exhibit 7 purports to be an Exemplar of Offending Goods, but denies any and all  
21 liability, denies generally and specifically each and every allegation pertaining to  
22 HauteLook contained therein, and is otherwise without knowledge or information  
23 sufficient to form a belief as to the truth of the remaining allegations.

24           29. In response to paragraph 29 of the Complaint, Defendant is without  
25 knowledge or information sufficient to form a belief as to the truth of these allegations,  
26 and on that basis denies these allegations.

1           30. In response to paragraph 30 of the Complaint, Defendant denies any and  
2 all liability, and denies generally and specifically each and every allegation pertaining  
3 to HauteLook contained therein.

4           31. In response to paragraph 31 of the Complaint, Defendant denies any and  
5 all liability, and denies generally and specifically each and every allegation pertaining  
6 to HauteLook contained therein.

7           32. In response to paragraph 32 of the Complaint, Defendant denies any and  
8 all liability, and denies generally and specifically each and every allegation pertaining  
9 to HauteLook contained therein.

10          33. In response to paragraph 33 of the Complaint, Defendant is without  
11 knowledge or information sufficient to form a belief as to the truth of these allegations  
12 and therefore denies them.

13          34. In response to paragraph 34 of the Complaint, Defendant denies any and  
14 all liability, and denies generally and specifically each and every allegation pertaining  
15 to HauteLook contained therein.

16          35. In response to paragraph 35 of the Complaint, Defendant is without  
17 knowledge or information sufficient to form a belief as to the truth of these allegations,  
18 and on that basis denies these allegations.

19          36. In response to paragraph 36 of the Complaint, Defendant is without  
20 knowledge or information sufficient to form a belief as to the truth of these allegations,  
21 and on that basis denies these allegations.

22          37. In response to paragraph 37 of the Complaint, Defendant denies any and  
23 all liability, and denies generally and specifically each and every allegation pertaining  
24 to HauteLook contained therein.

25          38. In response to paragraph 38 of the Complaint, Defendant is without  
26 knowledge or information sufficient to form a belief as to the truth of these allegations,  
27 and on that basis denies these allegations.  
28

1           39. In response to paragraph 39 of the Complaint, Defendant denies any and  
2 all liability, and reincorporates its responses asserted in paragraphs 1-38.

3           40. In response to paragraph 40 of the Complaint, Defendant denies any and  
4 all liability, and denies generally and specifically each and every allegation pertaining  
5 to HauteLook contained therein.

6           41. In response to paragraph 41 of the Complaint, Defendant denies the  
7 allegations contained therein.

8           42. In response to paragraph 42 of the Complaint, Defendant denies the  
9 allegations contained therein.

10          43. In response to paragraph 43 of the Complaint, Defendant denies the  
11 allegations contained therein.

12          44. In response to paragraph 44 of the Complaint, Defendant denies the  
13 allegations contained therein.

14          45. In response to paragraph 45 of the Complaint, Defendant denies the  
15 allegations contained therein.

16          46. In response to paragraph 46 of the Complaint, Defendant denies the  
17 allegations contained therein.

18          47. In response to paragraph 47 of the Complaint, Defendant denies the  
19 allegations contained therein.

20          48. In response to paragraph 48 of the Complaint, Defendant denies the  
21 allegations contained therein.

22          49. In response to paragraph 49 of the Complaint, Defendant denies the  
23 allegations contained therein.

24          50. In response to paragraph 50 of the Complaint, Defendant denies each and  
25 every allegation contained therein.

26          51. In response to paragraph 51 of the Complaint, Defendant denies any and  
27 all liability, and reincorporates its responses asserted in paragraphs 1-50.  
28

1           52. In response to paragraph 52 of the Complaint, Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of these allegations,  
3 and on that basis denies these allegations.

4           53. In response to paragraph 53 of the Complaint, Defendant is without  
5 knowledge or information sufficient to form a belief as to the truth of these allegations,  
6 and on that basis denies these allegations.

7           54. In response to paragraph 54 of the Complaint, Defendant denies the  
8 allegations contained therein.

9           55. In response to paragraph 55 of the Complaint, Defendant denies any and  
10 all liability, and denies generally and specifically each and every allegation pertaining  
11 to HauteLook contained therein.

12           56. In response to paragraph 56 of the Complaint, Defendant denies each and  
13 every allegation contained therein.

14           57. In response to paragraph 57 of the Complaint, Defendant denies the  
15 allegations contained therein.

16           58. In response to paragraph 58 of the Complaint, Defendant denies the  
17 allegations contained therein.

18           59. In response to paragraph 59 of the Complaint, Defendant denies the  
19 allegations contained therein.

20           60. In response to paragraph 60 of the Complaint, Defendant denies the  
21 allegations contained therein.

22           61. In response to paragraph 61 of the Complaint, Defendant denies the  
23 allegations contained therein.

24           62. In response to paragraph 62 of the Complaint, Defendant admits that  
25 Plaintiffs purport to assert a claim under Section 32 of the Lanham Act, 15 U.S.C. §  
26 1114, but denies any and all liability, and denies generally and specifically each and  
27 every allegation pertaining to HauteLook contained therein.  
28

1           63. In response to paragraph 63 of the Complaint, Defendant denies the  
2 allegations contained therein.

3           64. In response to paragraph 64 of the Complaint, Defendant denies the  
4 allegations contained therein.

5           65. In response to paragraph 65 of the Complaint, Defendant denies any and  
6 all liability, and reincorporates its responses asserted in paragraphs 1-64.

7           66. In response to paragraph 66 of the Complaint, Defendant denies any  
8 allegations as to HauteLook contained therein.

9           67. In response to paragraph 67 of the Complaint, Defendant is without  
10 knowledge or information sufficient to form a belief as to the truth of these allegations,  
11 and on that basis denies these allegations.

12           68. In response to paragraph 68 of the Complaint, Defendant is without  
13 knowledge or information sufficient to form a belief as to the truth of these allegations,  
14 and on that basis denies these allegations.

15           69. In response to paragraph 69 of the Complaint, Defendant is without  
16 knowledge or information sufficient to form a belief as to the truth of these allegations,  
17 and on that basis denies these allegations.

18           70. In response to paragraph 70 of the Complaint, Defendant is without  
19 knowledge or information sufficient to form a belief as to the truth of these allegations,  
20 and on that basis denies these allegations.

21           71. In response to paragraph 71 of the Complaint, Defendant is without  
22 knowledge or information sufficient to form a belief as to the truth of these allegations,  
23 and on that basis denies these allegations.

24           72. In response to paragraph 72 of the Complaint, Defendant is without  
25 knowledge or information sufficient to form a belief as to the truth of these allegations,  
26 and on that basis denies these allegations.

1           73. In response to paragraph 73 of the Complaint, Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of these allegations,  
3 and on that basis denies these allegations.

4           74. In response to paragraph 74 of the Complaint, Defendant is without  
5 knowledge or information sufficient to form a belief as to the truth of these allegations,  
6 and on that basis denies these allegations.

7           75. In response to paragraph 75 of the Complaint, Defendant denies any and  
8 all liability, and reincorporates its responses asserted in paragraphs 1-74.

9           76. In response to paragraph 76 of the Complaint, Defendant denies any and  
10 all liability, and denies generally and specifically each and every allegation pertaining  
11 to HauteLook contained therein.

12           77. In response to paragraph 77 of the Complaint, Defendant denies the  
13 allegations contained therein.

14           78. In response to paragraph 78 of the Complaint, Defendant denies any and  
15 all liability, and denies generally and specifically each and every allegation pertaining  
16 to HauteLook contained therein.

17           79. In response to paragraph 79 of the Complaint, Defendant denies each and  
18 every allegation contained therein.

19           80. In response to paragraph 80 of the Complaint, Defendant denies any and  
20 all liability, and denies generally and specifically each and every allegation pertaining  
21 to HauteLook contained therein.

22           81. In response to paragraph 81 of the Complaint, Defendant denies any and  
23 all liability, and denies generally and specifically each and every allegation pertaining  
24 to HauteLook contained therein.

25           82. In response to paragraph 82 of the Complaint, Defendant denies any and  
26 all liability, and denies generally and specifically each and every allegation pertaining  
27 to HauteLook contained therein.  
28

1           83. In response to paragraph 83 of the Complaint, Defendant admits that  
2 Plaintiffs purport to assert a claim and seek damages under 15 U.S.C. § 1117, but denies  
3 any and all liability, and denies generally and specifically each and every allegation  
4 pertaining to HauteLook contained therein.

5           84. In response to paragraph 84 of the Complaint, Defendant denies the  
6 allegations contained therein.

7           85. In response to paragraph 85 of the Complaint, Defendant denies the  
8 allegations contained therein.

9           86. In response to paragraph 86 of the Complaint, Defendant denies any and  
10 all liability, and denies generally and specifically each and every allegation pertaining  
11 to HauteLook contained therein.

12           87. In response to paragraph 87 of the Complaint, Defendant denies any and  
13 all liability, and reincorporates its responses asserted in paragraphs 1-86.

14           88. In response to paragraph 88 of the Complaint, Defendant is without  
15 knowledge or information sufficient to form a belief as to the truth of these allegations,  
16 and on that basis denies these allegations.

17           89. In response to paragraph 89 of the Complaint, Defendant states that  
18 Plaintiffs state a legal conclusion to which no response is required. If it is Plaintiffs'  
19 contention that they have made allegations as to Defendant in this paragraph, Defendant  
20 is without knowledge or information sufficient to form a belief as to the truth of these  
21 allegations, and on that basis denies them.

22           90. In response to paragraph 90 of the Complaint, Defendant denies the  
23 allegations contained therein.

24           91. In response to paragraph 91 of the Complaint, Defendant denies the  
25 allegations contained therein.

26           92. In response to paragraph 92 of the Complaint, Defendant denies any and  
27 all liability, and denies generally and specifically each and every allegation pertaining  
28 to HauteLook contained therein.

93. In response to paragraph 93 of the Complaint, Defendant denies the allegations contained therein.

94. In response to paragraph 94 of the Complaint, Defendant denies the allegations contained therein.

95. In response to paragraph 95 of the Complaint, Defendant denies the allegations contained therein.

96. In response to paragraph 96 of the Complaint, Defendant denies the allegations contained therein.

97. In response to paragraph 97 of the Complaint, Defendant denies the allegations contained therein.

98. In response to paragraph 98 of the Complaint, Defendant denies the allegations contained therein.

99. In response to paragraph 99 of the Complaint, Defendant denies any and all liability, and reincorporates its responses asserted in paragraphs 1-98.

100. In response to paragraph 100 of the Complaint, Defendant is otherwise without knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis denies these allegations.

101. In response to paragraph 101 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations, and on that basis denies these allegations.

102. In response to paragraph 102 of the Complaint, Defendant denies the allegations contained therein.

103. In response to paragraph 103 of the Complaint, Defendant denies any and all liability, and denies generally and specifically each and every allegation pertaining to HauteLook contained therein.

104. In response to paragraph 104 of the Complaint, Defendant denies the allegations contained therein.

1           105. In response to paragraph 105 of the Complaint, Defendant denies any and  
2 all liability, and reincorporates its responses asserted in paragraphs 1-104.

3           106. In response to paragraph 106 of the Complaint, Defendant states that  
4 Plaintiffs state a legal conclusion to which no response is required. If it is Plaintiffs'  
5 contention that they have made allegations as to Defendant in this paragraph, Defendant  
6 is without knowledge or information sufficient to form a belief as to the truth of these  
7 allegations, and on that basis denies them.

8           107. In response to paragraph 107 of the Complaint, Defendant is without  
9 knowledge or information sufficient to form a belief as to the truth of these allegations,  
10 and on that basis denies these allegations.

11           108. In response to paragraph 108 of the Complaint, Defendant is without  
12 knowledge or information sufficient to form a belief as to the truth of these allegations,  
13 and on that basis denies these allegations.

14           109. In response to paragraph 109 of the Complaint, Defendant is without  
15 knowledge or information sufficient to form a belief as to the truth of these allegations,  
16 and on that basis denies these allegations.

17           110. In response to paragraph 110 of the Complaint, Defendant is without  
18 knowledge or information sufficient to form a belief as to the truth of these allegations,  
19 and on that basis denies these allegations.

20           111. In response to paragraph 111 of the Complaint, Defendant denies the  
21 allegations contained therein.

22           112. In response to paragraph 112 of the Complaint, Defendant denies any and  
23 all liability, and reincorporates its responses asserted in paragraphs 1-111.

24           113. In response to paragraph 113 of the Complaint, Defendant admits that  
25 Plaintiffs purport to assert that this Court has subject matter jurisdiction under 28  
26 U.S.C. § 1338(b), but is otherwise without knowledge or information sufficient to form  
27 a belief as to the truth of these allegations, and on that basis denies these allegations.  
28

1           114. In response to paragraph 114 of the Complaint, Defendant is without  
2 knowledge or information sufficient to form a belief as to the truth of these allegations,  
3 and on that basis denies these allegations.

4           115. In response to paragraph 115 of the Complaint, Defendant denies the  
5 allegations contained therein.

6           116. In response to paragraph 116 of the Complaint, Defendant denies the  
7 allegations contained therein.

8           117. In response to paragraph 117 of the Complaint, Defendant denies the  
9 allegations contained therein.

10          118. In response to paragraph 118 of the Complaint, Defendant denies the  
11 allegations contained therein.

12          119. In response to paragraph 119 of the Complaint, Defendant denies the  
13 allegations contained therein.

14          120. In response to paragraph 120 of the Complaint, Defendant denies any and  
15 all liability, and reincorporates its responses asserted in paragraphs 1-119.

16          121. In response to paragraph 121 of the Complaint, Defendant admits that  
17 Plaintiffs purport to assert a claim under California Business and Professions Code §§  
18 17200 et seq. and state common law, but is otherwise without knowledge or information  
19 sufficient to form a belief as to the truth of these allegations, and on that basis denies  
20 these allegations.

21          122. In response to paragraph 122 of the Complaint, Defendant is without  
22 knowledge or information sufficient to form a belief as to the truth of these allegations,  
23 and on that basis denies these allegations.

24          123. In response to paragraph 123 of the Complaint, Defendant denies the  
25 allegations contained therein.

26          124. In response to paragraph 124 of the Complaint, Defendant denies the  
27 allegations contained therein.  
28

1           125. In response to paragraph 125 of the Complaint, Defendant denies the  
2 allegations contained therein.

3           126. In response to paragraph 126 of the Complaint, Defendant denies any and  
4 all liability, and reincorporates its responses asserted in paragraphs 1-125.

5           127. In response to paragraph 127 of the Complaint, Defendant admits that  
6 Plaintiffs purport to assert a claim under California state common law, but is otherwise  
7 without knowledge or information sufficient to form a belief as to the truth of these  
8 allegations and on that basis, denies these allegations.

9           128. In response to paragraph 128 of the Complaint, Defendant denies the  
10 allegations contained therein.

11           129. In response to paragraph 129 of the Complaint, Defendant denies the  
12 allegations contained therein.

13           130. In response to paragraph 130 of the Complaint, Defendant denies the  
14 allegations contained therein.

15           131. In response to paragraph 131 of the Complaint, Defendant denies any and  
16 all liability, and reincorporates its responses asserted in paragraphs 1-130.

17           132. In response to paragraph 132 of the Complaint, this paragraph is  
18 inapplicable to Defendant. To the extent any allegations are purported to be against  
19 Defendant, they are denied.

20           133. In response to paragraph 133 of the Complaint, this paragraph is  
21 inapplicable to Defendant. To the extent any allegations are purported to be against  
22 Defendant, they are denied.

23           134. In response to paragraph 134 of the Complaint, this paragraph is  
24 inapplicable to Defendant. To the extent any allegations are purported to be against  
25 Defendant, they are denied.

26           135. In response to paragraph 135 of the Complaint, this paragraph is  
27 inapplicable to Defendant. To the extent any allegations are purported to be against  
28 Defendant, they are denied.

136. In response to paragraph 136 of the Complaint, Defendant denies any and all liability, and reincorporates its responses asserted in paragraphs 1-135.

137. In response to paragraph 137 of the Complaint, Defendant admits that the statutes cited therein speak for themselves. Defendant denies any allegations contained therein.

138. In response to paragraph 138 of the Complaint, Defendant denies the allegations contained therein.

139. In response to paragraph 139 of the Complaint, Defendant denies the allegations contained therein.

140. In response to paragraph 140 of the Complaint, Defendant denies the allegations contained therein.

### **FIRST AFFIRMATIVE DEFENSE**

#### **(Remote, Speculative, and Contingent Damages)**

141. Plaintiffs' claimed damages may not be recovered as they are remote, speculative, and contingent.

### **SECOND AFFIRMATIVE DEFENSE**

#### **(No Enforceable Trademark)**

142. Plaintiffs' claims are barred by the fact that the trademarks referenced in the Complaint are not valid and enforceable and are not entitled to trademark protection.

### **THIRD AFFIRMATIVE DEFENSE**

#### **(Lack of Standing)**

143. Plaintiffs' claims are barred by the fact that the Plaintiffs were not the exclusive owners of the trademarks referenced in the Complaint and thus lack standing to sue.

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1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Justification and Privilege)**

3 144. Defendant's actions respecting the subject matters alleged in the  
4 claims, and each of them, were undertaken in good faith with the absence of malicious  
5 intent to injure Plaintiffs and constitute lawful, proper, and justified means to further  
6 Defendant's sole purpose of engaging in and continuing their business. By reason  
7 thereof, Plaintiffs are barred, in whole or in part, from recovery on the alleged claims in  
8 the Complaint.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 **(Non-willful Conduct)**

11 145. Any an all acts alleged to have been committed by Defendant were  
12 performed with lack of knowledge and a lack of willful intent.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 **(Estoppel)**

15 146. Plaintiffs' alleged claims are barred in whole or in part because, as a  
16 result of their own acts and omissions, Plaintiffs are estopped from obtaining the relief  
17 sought in the Complaint.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 **(Waiver)**

20 147. Plaintiffs' alleged claims are barred in whole or in part because, as a  
21 result of their acts and omissions, Plaintiffs have waived any right to recover the relief  
22 sought in the Complaint.

23 **NINTH AFFIRMATIVE DEFENSE**

24 **(Laches)**

25 148. Plaintiffs' alleged claims are barred in whole or in part by the  
26 doctrine of laches for Plaintiffs' delay in notifying Defendant of their claims and in  
27 bringing this action.  
28

**TENTH AFFIRMATIVE DEFENSE**

**(Acquiescence and Consent)**

149. Plaintiffs' alleged claims are barred in whole or in part because Plaintiffs have actively misled Defendant into believing that Plaintiffs have consented to Defendant's use of the alleged design at issue.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

150. The Complaint, and each and every claim for relief therein, fails to state a claim against Defendant upon which relief can be granted.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

151. Plaintiffs' claims are barred under the equitable doctrine of unclean hands and for reasons of public policy.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Fraud)**

152. Plaintiffs' alleged claims are barred, in whole or in part, by Plaintiffs' fraud.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Apportionment)**

153. Defendant asserts that any purported damages sought by the Plaintiffs in the form of Defendant's profits are limited by the apportionment theory based on the percentage of profits attributable to the alleged infringement.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Mitigation)**

154. Plaintiffs' claims are barred by its failure to mitigate damages.

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**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Invalid Trademark Registration)**

155. The Complaint, and each and every claim for relief therein, is barred by because the United States Patent and Trademark Office has not properly registered Plaintiffs' alleged registered trademark.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Abuse of Process)**

156. Upon information and belief, Plaintiffs' claims are barred because of its anti-competitive intent and conduct, its misuse of trademarks law, and its abuse of the judicial process.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Express/Implied Non-Exclusive License)**

157. Upon information and belief, Plaintiffs' claims are barred because Plaintiffs granted an express or implied non-exclusive license and intended that Defendant HauteLook would distribute goods bearing the allegedly infringing trademark.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

158. The Complaint and each and every claim for relief therein, is barred by the applicable statute of limitations.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Reservation)**

159. Defendant reserves the right to assert additional defenses as they become known.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiffs take nothing by reason of its Complaint in this matter;
2. That judgment be rendered in favor of Defendant and that the Complaint be dismissed with prejudice;

1           3.     That Defendants be awarded their costs of suit in this matter, including  
2 reasonable attorneys' fees; and

3           4.     For such other and further relief as the Court deems just and proper.  
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5 Dated: July 22, 2011

CALL & JENSEN  
A Professional Corporation  
Scott P. Shaw  
Deborah A. Gubernick

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8 By: /s/ Scott P. Shaw  
9 Scott P. Shaw

10 Attorneys for Defendant HauteLook  
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CALL & JENSEN  
A PROFESSIONAL CORPORATION

**DEMAND FOR JURY TRIAL**

Defendant hereby demands a trial by jury.

Dated: July 22, 2011

CALL & JENSEN  
A Professional Corporation  
Scott P. Shaw  
Deborah A. Gubernick

By: /s/ Scott P. Shaw  
Scott P. Shaw

Attorneys for Defendant HauteLook, Inc.

CALL & JENSEN  
A PROFESSIONAL CORPORATION

**CERTIFICATE OF SERVICE**  
(United States District Court)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On July 22, 2011, I have served the following documents described as: **DEFENDANT HAUTELOOK'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT; DEMAND FOR JURY TRIAL** on the following person(s) in the manner(s) indicated below:

**SEE ATTACHED SERVICE LIST**

☒ (BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing User(s) through the Court's Electronic Filing System.

☒ (FEDERAL) I declare that I am a member of the Bar and a registered Filing User for this District of the United States District Court.

☐ (FEDERAL) I declare that I am employed in the offices of a member of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Certificate is executed on July 22, 2011, at Newport Beach, California.

/s/ Scott P. Shaw  
Scott P. Shaw

## SERVICE LIST

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